

EXHIBIT 163

Page 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x
5 JOHNSON & JOHNSON and JOHNSON & JOHNSON
6 CONSUMER COMPANIES, INC.,
7 Plaintiffs,

8
9 v. Case Number 07-CIV-7061 (JSR)
10

11 THE AMERICAN NATIONAL RED CROSS, LEARNING
12 CURVE INTERNATIONAL, INC., MAGLA PRODUCTS,
13 LLC, WATER-JEL TECHNOLOGIES, INC., and
14 FIRST AID ONLY, INC.,

15 Defendants.

16 -----x
17

18 ***HIGHLY CONFIDENTIAL***
19 DEPOSITION OF ALISON CARPINELLO
20 New York, New York
21 November 9, 2007
22

23 Reported by:
24 MARY F. BOWMAN, RPR, CRR
25 JOB NO. 13847

Page 157

1 Carpinello - HIGHLY CONFIDENTIAL
2 whatever manner, have you received any
3 communications that talk about confusion? In
4 other words, has anyone ever said oh, I thought
5 this glove was made by the Red Cross?

6 MR. REDUQUE: Objection to form.

7 A. I know of no complaints or inquiries
8 to that nature.

9 Q. Is it Magla's understanding that the
10 Red Cross, the cross itself standing alone, is a
11 generic symbol?

12 MR. REDUQUE: Objection. We served
13 objections to the topics on the supplemental
14 notice of -- supplemental Rule 30(b)(6)
15 notice which had two topics; one on
16 genericness, one on functionality.

17 Ms. Carpinello has not been designated
18 to testify to those topics. We object to
19 those topics, as I said earlier, because
20 they call for legal conclusions and
21 premature disclosure of expert testimony.

22 But subject to those objections,
23 please go ahead and answer that question.

24 But I will caution you to the extent that
25 you have an understanding of genericness and

Page 158

1 Carpinello - HIGHLY CONFIDENTIAL
2 would respond accordingly to that question
3 based on attorney/client communications with
4 either me or any other attorney on the
5 defense team, I would instruct you not to
6 answer the question, but to otherwise answer
7 the question if you can do so based on your
8 own personal understanding.

9 A. Can you repeat the question.

10 (Record read)

11 A. I don't know if it was Magla's
12 understanding, but my personal thing would be it
13 is a generic symbol.

14 Q. Fair enough. A generic symbol for
15 what then?

16 A. Safety, medical, first aid.

17 Q. Do you know if that concept, the idea
18 of the Red Cross being a generic symbol, do you
19 know if that was discussed in the -- first
20 internally in Magla in the process of
21 negotiating the license agreement?

22 MR. REDUQUE: Can I just get a
23 standing objection on my previous ones for
24 all the questions that deal with
25 genericness?

EXHIBIT 164

Page 1

1

2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3

JOHNSON & JOHNSON, et al.,)
vs.)
Plaintiffs,)
vs.) 07 CIV 7061
AMERICAN RED CROSS, et al.,)
Defendants.)
-----)

4

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VIDEOTAPED DEPOSITION OF HOWARD HIRSCH

13

New York, New York

14

Thursday, November 8, 2007

15

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19

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21

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Reported by:

Philip Rizzuti

JOB NO. 13845

23

24

25

Page 142

1 Hirsch

2 correct?

3 A. Yes.

4 Q. If you turn to page 4, paragraphs
5 numbered 7 and 8?

6 A. Yes.

7 Q. Do you understand that you have
8 been designated to testify on topics 7 and 8
9 as a corporate representative?

10 MR. REDUQUE: That is actually
11 wrong. We served our objections last
12 night and objected to topics 7 and 8 on
13 the ground that they call for a legal
14 conclusion and expert testimony
15 prematurely.

16 So Mr. Hirsch has not been
17 designated to testify as to topics 7 and
18 8, but with those objections in mind you
19 can ask your questions.

20 Q. Okay. Looking at topic 7, have
21 you had a moment to review it?

22 A. Yes.

23 Q. Does Water-Jel think that the Red
24 Cross mark is generic?

25 MR. REDUQUE: Objection. Calls

Page 143

1 Hirsch

for a legal conclusion. To the extent
that your understanding of what generic
means is based exclusively on
conversations that you had with counsel I
would instruct you to not answer the
question. But to the extent that you
have an understanding of what the term
generic means that is separate and apart
from your conversations that you had with
counsel, please go ahead and answer the
question.

Just so I can have a standing
objection to any questions that relate to
topics 7 and 8 based on the objections
that we served last night, just so I
don't have to keep repeating them.

18 MS. LEIBENSPERGER: Yes.

19 MR. REDUQUE: Thank you.

20 A. So based on my understanding, yes,
21 I do believe that the Red Cross emblem is
22 generic.

²³ Q. Why do you believe that?

24 A. Because the emblem has been used
25 for my entire lifetime to symbolize first-aid

Page 144

1 Hirsch

2 or lifeguard assistance, and separate and
3 apart from any manufacturer or organization.

4 Q. What does the Red Cross emblem
5 mean to you?

6 A. It means help available here, or
7 first-aid station.

8 Q. Does Water-Jel have any evidence
9 that the Red Cross is generic?

10 A. We have done no separate studies.

11 Q. So Water-Jel doesn't have any
12 consumer survey?

13 A. No.

14 Q. Is the J&J mark generic?

15 A. The Johnson & Johnson trademark?

16 Q. The Johnson & Johnson Red Cross
17 trademark, does that fall into being --

18 MR. REDUQUE: Same objection to
19 form.

20 A. The Johnson & Johnson Red Cross is
21 always coupled with the Johnson & Johnson
22 brand name, and therefore that coupling is not
23 generic. But if Johnson & Johnson were to put
24 out a package that just had a Red Cross on it
25 and no other identification it would be

Page 145

1 Hirsch

generic and it would not be associated with
Johnson & Johnson. That is my opinion.

4 Q. Do you think that the American Red
5 Cross use of the red cross, is that cross
6 generic?

7 A. I think the same comment applies,
8 is that coupled with the American Red Cross
9 name, that coupling with the Red Cross is very
10 specific. But the Red Cross by itself,
11 whatever its origin, is generic.

That is not only in this country,
it is around the world.

14 MS. LEIBENSPERGER: Would you mark
15 as Hirsch Exhibit 19, Defendant Water-Jel
16 Technologies LLC's Responses and
17 Objections to Plaintiff's First Set of
18 Requests For Admission.

19 (Hirsch Exhibit 19, Defendant
20 Water-Jel Technologies LLC's Responses
21 and Objections to Plaintiff's First Set
22 of Requests For Admission, marked for
23 identification, as of this date.)

24 Q. Mr. Hirsch, I have handed you
25 Hirsch Exhibit 19, have you seen this document

EXHIBIT 165

**STATUTES
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT MOVEMENT**

*(adopted by the 25th International Conference
of the Red Cross at Geneva in 1986,
amended in 1995¹ and 2006²)*

Preamble.....	5
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SECTION I

General Provisions

Article 1 Definition	6
Article 2 States Parties to the Geneva Conventions	7

SECTION II

Components of the Movement

Article 3 National Red Cross and Red Crescent Societies	7
Article 4 Conditions for recognition of National Societies	9
Article 5 The International Committee of the Red Cross.....	9
Article 6 The International Federation of Red Cross and Red Crescent Societies.....	11
Article 7 Cooperation	12

SECTION III

Statutory Bodies

The International Conference of the Red Cross and Red Crescent

Article 8 Definition	13
Article 9 Composition	13
Article 10 Functions	13
Article 11 Procedure	14

The Council of Delegates

of the International Red Cross and Red Crescent Movement

Article 12 Definition	15
Article 13 Composition	15
Article 14 Functions	16
Article 15 Procedure	16

¹ Resolution 7 of the 26th International Conference of the Red Cross and Red Crescent at Geneva.

² Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent at Geneva.

The Standing Commission of the Red Cross and Red Crescent

Article 16	Definition	17
Article 17	Composition	17
Article 18	Functions	18
Article 19	Procedure	19

SECTION IV

Final Provisions

Article 20	Amendments.....	20
Article 21	Entry into force	20

**RULES OF PROCEDURE
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT MOVEMENT**

*(adopted by the 25th International Conference
of the Red Cross at Geneva in 1986,
amended in 1995¹)*

SECTION I

General Provisions

Rule 1	General object of these Rules	21
Rule 2	Other rules	21
Rule 3	Conflicting provisions	21

SECTION II

The International Conference

Rule 4	Place and date	22
Rule 5	Convocation	22
Rule 6	Provisional agenda	22
Rule 7	Submission and despatch of official documents	23
Rule 8	Submission and distribution of National Society reports on their work	23
Rule 9	Participants	23
Rule 10	Guests	24
Rule 11	Information media	24
Rule 12	Languages	24
Rule 13	Alphabetical order	24
Rule 14	Quorum	25
Rule 15	Chairmanship	25
Rule 16	Bureau and commissions	25
Rule 17	Notification of proposals	26
Rule 18	Debates	26
Rule 19	Adoption of resolutions	27
Rule 20	Voting procedure	28
Rule 21	Election of members of the Standing Commission	28
Rule 22	Proceedings of the Conference	29

¹ Resolution 7 of the 26th International Conference of the Red Cross and Red Crescent at Geneva.

SECTION III

The Council of Delegates

Rule 23	Place and date	30
Rule 24	Convocation.....	30
Rule 25	Provisional agenda.....	30
Rule 26	Opening meeting.....	31
Rule 27	Work of the Council	31
Rule 28	Proceedings of the Council	31

SECTION IV

The Standing Commission

Rule 29	Convocation.....	31
Rule 30	Quorum	32
Rule 31	Proceedings of the Standing Commission	32

SECTION V

Final Provisions

Rule 32	Amendments to the Statutes and to these Rules.....	32
Rule 33	Entry into force of these Rules.....	32

STATUTES
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT MOVEMENT

PREAMBLE

The International Conference of the Red Cross and Red Crescent,

Proclaims that the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies together constitute a worldwide humanitarian movement, whose mission is to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies, to work for the prevention of disease and for the promotion of health and social welfare, to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of its protection and assistance.

Reaffirms that, in pursuing its mission, the Movement shall be guided by its Fundamental Principles, which are:

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary Service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity *There can be only one Red Cross or one Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.*

Universality *The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.*

*Recalls that the mottoes of the Movement, *Inter arma caritas* and *Per humanitatem ad pacem*, together express its ideals.*

Declares that, by its humanitarian work and the dissemination of its ideals, the Movement promotes a lasting peace, which is not simply the absence of war, but is a dynamic process of cooperation among all States and peoples, cooperation founded on respect for freedom, independence, national sovereignty, equality, human rights, as well as on a fair and equitable distribution of resources to meet the needs of peoples.

SECTION I: GENERAL PROVISIONS

ARTICLE 1

Definition

1. The International Red Cross and Red Crescent Movement¹ (hereinafter called "the Movement") is composed of the National Red Cross and Red Crescent Societies recognized in accordance with Article 4² (hereinafter called "National Societies"), of the International Committee of the Red Cross (hereinafter called "the International Committee") and of the International Federation of Red Cross and Red Crescent Societies (hereinafter called "the Federation").
2. The components of the Movement, while maintaining their independence within the limits of the present Statutes, act at all times in accordance with the Fundamental Principles and cooperate with each other in carrying out their respective tasks in pursuance of their common mission.
3. The components of the Movement meet at the International Conference of the Red Cross and Red Crescent (hereinafter called "the International Conference") with the States Parties to the Geneva Conventions of 27 July 1929 or of 12 August 1949.

¹ Also known as the International Red Cross.

² Any National Society recognized at the date of entry into force of the present Statutes shall be considered as recognized in terms of Article 4.

EXHIBIT 166

What is ICRC's relationship with national Red Cross and Red Crescent societies?

Page 1 of 2

[About the ICRC](#) | [ICRC activities](#) | [The ICRC worldwide](#) | [Focus](#) | [Humanitarian law](#) | [Info resources](#) | [News](#)
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Ottawa Convention
The prohibition of
anti-personnel mines

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15-11-2002 FAQ

What is ICRC's relationship with national Red Cross and Red Crescent societies?

ICRC, national societies from 178 countries and their International Federation form the International Red Cross and Red Crescent Movement. All within the Movement share common fundamental principles but are not linked hierarchically. In conflict situations ICRC takes the lead role and directs the work of its partners.

What national societies do: Within their own countries, national societies are autonomous organisations working with professional staff and trained volunteers. They carry out their humanitarian activities according to local needs, in line with their own statutes and subject to national law.

When conflict breaks out: ICRC and the national society will agree on procedures to work together, as far as possible, to help the victims. According to a 1997 accord ([Seville Agreement](#)), ICRC takes lead responsibility in conflict areas.

ICRC's areas of expertise: ICRC is a reference on international humanitarian law (IHL), restoring family links and conflict preparedness and response. In these areas, ICRC contributes to the development of national societies.

Recognizing new societies: ICRC has the statutory responsibility of checking that all national societies in formation fulfill certain conditions. After recognition it has no direct authority over them.

Mobilizing support: Much of ICRC's work for the victims of conflict is supported by national societies, which provide funding and/or personnel. Societies which have the means also contribute to the development of those which need such assistance, in order to strengthen the Movement as a whole.

Making policy: ICRC, all national societies and their International Federation meet every two years to decide on matters of common interest (Council of Delegates). Every four years they also meet at the International Conference, along with the governments of states that have signed up to the Geneva Conventions.

More on this: International Review of the Red Cross (June 1998) - [Cooperation between National Societies and the International Committee of the Red Cross: an essential and demanding partnership](#)

The answers to FAQs on this site are intended as brief, informative summaries of what are often complex matters, and the terminology used has no legal significance.

Other documents in this section:

[Info resources](#) > [Frequently asked questions](#)

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15-11-2002

EXHIBIT 167

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Page 1

1 JULIE A. ORTMEIER
2 BEFORE THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 - - - - - x
5 JOHNSON & JOHNSON and :
6 JOHNSON & JOHNSON CONSUMER :
7 COMPANIES, INC., :
8 Plaintiffs, : Civil Action No.
9 vs. : 07Civ7061 (JSR/DCF)
10 THE AMERICAN RED CROSS, :
11 LEARNING CURVE INTERNATIONAL, :
12 INC., MAGLA PRODUCTS, LLC, :
13 WATER-JEL TECHNOLOGIES, INC., :
14 and FIRST AID ONLY, INC., :
15 Defendants. :
16 - - - - - x
17
18 HIGHLY CONFIDENTIAL
19 VIDEOTAPED 30(b)(6) DEPOSITION OF
20 JULIE A. ORTMEIER
21
22 Washington, D.C.
23 Wednesday, November 14, 2007
24 REPORTED BY:
25 SARA A. WICK, RPR, CRR

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Page 2

1 JULIE A. ORTMEIER
2 Deposition of JULIE A. ORTMEIER, called for
3 examination pursuant to Notice of Deposition, on
4 Wednesday, November 14, 2007, in Washington, D.C.,
5 at the offices of Hogan & Hartson LLP, 555 13th
6 Street Northwest, at 9:37 a.m., before SARA A. WICK,
7 a Notary Public in and for the District of Columbia,
8 when were present on behalf of the respective
9 parties:

10

11 PATRICK ALMONRODE, ESQ.

12 Patterson Belknap Webb & Tyler LLP

13 1133 Avenue of the Americas

14 New York, New York 10036

15 212-336-2339

16 palmonrode@pbwt.com

17 On behalf of Plaintiffs

18

19

20

21

22

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24

25 -- continued --

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Page 3

1 JULIE A. ORTMEIER

2 APPEARANCES (continued) :

3

4 ANNA KURIAN SHAW, ESQ.

5 Hogan & Hartson LLP

6 555 13th Street Northwest

7 Washington, DC 20004

8 202-637-5687

9 ajkuri@hhlaw.com

10 On behalf of Defendants

11

12 Also Present: William Causey

13 Jonathan Perry, Videographer

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Page 16

1 JULIE A. ORTMEIER

2 Q What is that meaning?

3 A Someone who is not authorized.

4 Q Not authorized to do what?

5 A To use the Red Cross emblem.

6 Q Okay. Does the American Red Cross take

7 steps to prevent or stop unauthorized uses of the

8 Red Cross emblem?

9 A Yes.

10 Q Do you send out cease-and-desist letters?

11 And by "you," of course, I mean the American Red

12 Cross.

13 A Yes, we do.

14 Q Do you send out letters asking trademark
15 applicants to amend their applications?

16 A In some instances, yes.

17 Q Do you take any other steps to prevent or
18 stop unauthorized uses of the Red Cross emblem?

19 A Besides what?

20 Q Besides those two that we talked about,
21 sending out cease-and-desist letters and sending out
22 letters to ask trademark applicants to amend their
23 applications.

24 A We have engaged in campaigns to educate
25 certain segments or certain industries that we

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Page 17

1 JULIE A. ORTMEIER

2 notice there is a prevalent misuse of a Red Cross,
3 yes.

4 Q What are those industries or segments or
5 however you --

6 A Several years ago, we -- we sent letters
7 to the adult costume industry for the naughty nurse
8 costumes. We have also, through various Hollywood
9 studios, sent letters and educational material to
10 them to make sure that they understood what a red
11 cross is, its, you know, use in movies and TV shows
12 and that type of thing.

13 Those are the two that come to mind.

14 Q You defined those -- or you mentioned
15 those, referred to those as campaigns.

16 A Yes, I did.

17 Q And so those were -- in those instances,
18 you sent those letters out to every company that you
19 could find in those segments?

20 MS. SHAW: Objection; foundation.

21 THE WITNESS: We sent the letters out
22 based on lists found by my paralegal at the time.

23 BY MR. ALMONRODE:

24 Q I see. How does a possible unauthorized
25 use of the emblem come to your attention, the

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Page 29

1 JULIE A. ORTMEIER

2 send C&D letters to all unauthorized users that come
3 to its attention? I'm sorry. That's badly phrased.

4 Setting aside for now trademark
5 applications, because I realize that's a different
6 process, does the Red Cross make it a practice to
7 send C&D letters to all other unauthorized users of
8 the emblem that come to its attention?

9 A Generally, yes. There are exceptions. If
10 we have contacted someone in the past and another
11 misuse is brought to our attention, sometimes we'll
12 pick up the phone, if we have a contact at that
13 company. It's more efficient, and a lot of times
14 it's just a mistake on their part.

15 Q Okay. But is it fair to say that the Red
16 Cross tries to -- tries to prevent or stop every
17 unauthorized use that comes to its attention?

18 A In the United States, yes.

19 Q Okay. And you would make that effort
20 without regard to the type of business or
21 organization or individual that might be misusing?
22 I'm sorry. Is that true?

23 A Yes.

24 Q Without regard to whether they're making
25 money from the unauthorized use or not?

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Page 30

1 JULIE A. ORTMEIER

2 A Yes.

3 Q Are there any particular kinds of
4 unauthorized uses which the Red Cross would not
5 send, would not try to stop or prevent?

6 MS. SHAW: Objection; vague.

7 THE WITNESS: No, not that I can think of.

8 BY MR. ALMONRODE:

9 Q What's the Red Cross's purpose in trying
10 to prevent or stop unauthorized uses?

11 A We have an obligation under the Geneva
12 Conventions to protect the emblem. We educate a
13 number of people about 18 USC 706. And we are
14 protecting the American Red -- the American Red
15 Cross's rights in the Red Cross emblem.

16 Q When you say you have an obligation under
17 the Geneva Conventions to protect the emblem, in
18 what sense do you mean the word "protect"?

19 A Prevent the misuse of or stop.

20 Q Right. And how does that protect the
21 emblem?

22 MS. SHAW: Objection; vague.

23 THE WITNESS: I'm sorry. Will you repeat
24 the question.

25 BY MR. ALMONRODE:

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Page 149

1 JULIE A. ORTMEIER

2 organization.

3 Q Okay. And is that, in part, because
4 misuses can, in some circumstances, put American Red
5 Cross personnel in danger in armed conflicts?

6 A Yes, American Red Cross and other Red
7 Cross workers, yes.

8 Q Of course. I'm sorry. Now, the next
9 sentences says, "for this reason, the Canadian Red
10 Cross society does not authorize use of the emblem
11 for commercial purposes and does not accept money or
12 royalties for such use."

13 Do you know whether that's currently the
14 policy of the Canadian Red Cross?

15 MS. SHAW: Objection; calls for
16 speculation.

17 THE WITNESS: I don't know.

18 BY MR. ALMONRODE:

19 Q If you know. Are all of the national
20 societies around the world bound to the same degree
21 by the policies set by the ICRC?

22 A The policies set by the ICRC are
23 aspirational. They're guidelines. They're -- the
24 ICRC has no enforcement capability.

25 Q Are you finished?

Highly Confidential

Page 164

1 JULIE A. ORTMEIER

2 policy on cause marketing?

3 A May I look at my other exhibits?

4 Q Sure.

5 MS. SHAW: I'll just caution the witness
6 not to speculate.

7 THE WITNESS: Because the statement of
8 revenue-generating policies in Exhibit 8 is in draft
9 form, I don't know if there is a written policy in
10 place today.

11 BY MR. ALMONRODE:

12 Q The document you just referred to, Exhibit
13 8, when it mentions "restatement," it refers to
14 itself as a restatement, do you know if there was a
15 written policy that this is restating?

16 A I do not know.

17 Q Is there someone who might know the
18 answers to those questions?

19 A I would think Kristine Templin or Kathleen
20 Loehr might.

21 Q The American Red Cross currently licenses
22 the emblem for commercial use by other entities; is
23 that correct?

24 MS. SHAW: Objection; foundation.

25 MR. ALMONRODE: Well --

EXHIBIT 168

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Page 1

1 JENNIFER NIYANGODA

2 BEFORE THE UNITED STATES DISTRICT COURT

3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 - - - - - x

5 JOHNSON & JOHNSON and :
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13 WATER-JEL TECHNOLOGIES, INC., :
14 and FIRST AID ONLY, INC., :
15 Defendants. :
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7 Notary Public in and for the District of Columbia,
8 when were present on behalf of the respective
9 parties:

10

11 PHYLLIS STAUB WALLITT, ESQ.

12 Patterson Belknap Webb & Tyler LLP

13 1133 Avenue of the Americas

14 New York, New York 10036

15 212-336-2339

16 palmonrode@pbwt.com

17 On behalf of Plaintiffs

18

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21

22

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25

-- continued --

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Page 3

1 JENNIFER NIYANGODA

2 APPEARANCES (continued) :

3

4 ANNA KURIAN SHAW, ESQ.

5 WILLIAM SLAVEN, ESQ.

6 Hogan & Hartson LLP

7 555 13th Street Northwest

8 Washington, DC 20004

9 202-637-5687

10 ajkuri@hhlaw.com

11 On behalf of Defendants

12

13 Also Present: Julie Ortmeier

14 Jonathan Perry, Videographer

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Page 58

1 JENNIFER NIYANGODA

2 A I was the lead on the business side.

3 Q And other than the process that you
4 testified to earlier involving the research team and
5 risk and legal, was anyone else involved with the
6 contracting at American Red Cross?

7 A Legal counsel.

8 Q Any of the individuals that report to you,
9 were they involved with the contracting process?

10 A They may have been.

11 Q And who was that?

12 A Who was it at what point in time?

13 Q Okay. Was Shay Harris involved in
14 negotiations and contracting?

15 A In -- I guess I need specific examples.

16 She helped me.

17 Q Right.

18 A So she may have helped facilitated it --
19 facilitate some contracts.

20 Q Okay. And then the final phase is product
21 development; is that right?

22 A Yes.

23 Q And who oversees product development?

24 A I do.

25 Q Is that something that the -- is product

Highly Confidential

Page 59

1 JENNIFER NIYANGODA

2 development something that the licensee does?

3 MS. SHAW: You can answer. Sorry.

4 THE WITNESS: We do it together.

5 BY MS. WALLITT:

6 Q Can you explain that process?

7 A Red Cross retains all control over the
8 product development process, including the packaging
9 and promotional developments. So we have final
10 review and approval.

11 Q How else does American Red Cross maintain
12 control -- retain control of the final review and
13 approval?

14 A What other ways? I guess I'm not sure
15 about your question.

16 Q Okay.

17 A Our involvement is consulting along the
18 way. So we have our health and safety team and our
19 preparedness team reviewing and providing their
20 expert input into the products. We also work
21 closely with the product development team at our --
22 on our partner side.

23 Q Okay. And is this after -- this is after
24 a contract has been signed; is that right?

25 A Correct.

Highly Confidential

Page 60

1 JENNIFER NIYANGODA

2 Q And what other roles does the licensing
3 partner play in this process other than product
4 development, if any?

5 A What do you mean by "roles"? It's a
6 pretty open-ended question.

7 Q Right. Well, generally, what does the
8 licensee do for the American Red Cross?

9 MS. SHAW: Objection; vague.

10 THE WITNESS: Yeah, it's a pretty
11 open-ended question. That's our entire partnership.
12 So there's a lot of roles.

13 BY MS. WALLITT:

14 Q Okay. Well, generally, does the -- the
15 licensee manufactures the product; is that right?

16 A Yes.

17 Q And does the licensee do the advertising
18 for product?

19 A Yes.

20 Q What about marketing?

21 A Yes.

22 Q What other -- what other similar roles
23 does the licensee play?

24 A Retail distribution.

25 Q So the licensee decides how the product's

Highly Confidential

Page 61

1 JENNIFER NIYANGODA

2 going to be distributed to retail?

3 A They make their recommendations, and
4 again, the Red Cross retains all review and
5 approval.

6 Q And the licensee -- let me rephrase that.

7 How does the -- what role does the Red
8 Cross -- American Red Cross play in overseeing the
9 manufacturing of the products?

10 A We don't oversee the manufacturing of the
11 product. We, again, review and approve all the
12 products and product samples that come out of the
13 manufacturing process.

14 Q If the licensee were to subcontract for
15 manufacturing of the product, is that something that
16 the American Red Cross would approve or disapprove?

17 A I'd have to consult with my legal counsel.
18 I'm not sure what that means.

19 Q Let's suppose that a contract was signed
20 and a licensing partner was going to manufacture the
21 product in China. Is that something that the
22 American Red Cross would want to approve before
23 allowing the licensee to manufacture the product in
24 China?

25 MS. SHAW: Objection; vague.

Highly Confidential

Page 115

1 JENNIFER NIYANGODA

2 for speculation.

3 THE WITNESS: I think we would discuss the
4 opportunity and the scope of an exclusivity.

5 BY MS. WALLITT:

6 Q And the Target co-branded kit, that was
7 only sold at Target; right?

8 A The one with the Target name on it?

9 Q Yes.

10 A Correct. It may have been on amazon.com,
11 too. I'm not sure.

12 Q Okay. Thanks.

13 A I just want to make clear, though, that
14 this doesn't have anything to do with the Target
15 kit, this document. There seems to be some
16 confusion.

17 (Exhibit Niyangoda 17 identified.)

18 MS. WALLITT: This is a document that's
19 been Bates stamped 19035 through 36.

20 BY MS. WALLITT:

21 Q I could direct your attention to the
22 bottom e-mail sent by Kathleen Loehr.

23 A Okay.

24 Q On the second page, the last paragraph,
25 was there a concern that individuals who would wear

EXHIBIT 169

Highly Confidential

Page 1

1 ANDREA MORISI
2 UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4

5 - - - - - - - - - - - - - - -x

6 JOHNSON & JOHNSON, et al., :

7 Plaintiffs, : Case Number

8 vs. : 07 CIV 7061

9 AMERICAN RED CROSS, et al.,:

10 Defendants. :

11 - - - - - - - - - - - - - - -x

12

13 HIGHLY CONFIDENTIAL

14 30(B) (6) VIDEO DEPOSITION OF ANDREA MORISI

15

16

17 Washington, DC

18 Friday, November 9, 2007

19

20

21

22

23 REPORTED BY:

24 CARMEN SMITH

25

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Page 2

1 ANDREA MORISI
2 Deposition of ANDREA MORISI, called for
3 examination pursuant to notice of deposition, on
4 Friday, November 9, 2007, in Washington, DC, at the
5 offices of Hogan & Hartson, 555 13th Street NW, at
6 9:42 a.m., before CARMEN SMITH, a Notary Public
7 within and for the District of Columbia, when were
8 present on behalf of the respective parties:

9
10 CHRISTOPHER Y. MILLER, ESQ.

11 Patterson Belknap Webb & Tyler LLP
12 1333 Avenue of the Americas
13 New York, New York 10036-6710
14 cymiller@pbwt.com
15 212-336-2948

16 On behalf of Plaintiffs

17
18 ANNA J. KURIAN SHAW, ESQ.
19 Hogan & Hartson LLP
20 555 Thirteenth Street, Northwest
21 Washington, DC 20004
22 ajkurian@hhlaw.com
23 202-637-5687
24 On behalf of Defendants

25 -- continued --

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Page 3

1 ANDREA MORISI

2 APPEARANCES (Continued):

3

4 ALSO PRESENT:

5 WILLIAM F. CAUSEY, ESQ.

6 (American Red Cross)

7 T.J. O'TOOLE (Video Operator)

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Page 10

1 ANDREA MORISI

2 Q How did they change?

3 A I took over the intellectual property
4 matters.

5 Q Who did you take over the intellectual
6 property matters from?

7 A A woman named Patsy Davis.

8 Q Did Patsy Davis leave the American Red
9 Cross or just move on to other things within the
10 organization?

11 A She left the American Red Cross.

12 Q Okay. You mentioned that you worked on
13 intellectual property matters starting in 1991 or
14 1992. What types of intellectual property matters
15 were you working on?

16 A Addressing misuses of the Red Cross name
17 and emblem by third parties, filing trademark
18 applications and defending those and advising units
19 on copyright issues.

20 Q Okay. And when you say "advising units,"
21 do you mean national American Red Cross units or
22 chapters or both?

23 A Both.

24 Q At the time you started in 1991, was there
25 anyone else working on intellectual property issues

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Page 21

1 ANDREA MORISI

2 student-type function I then later supervised.

3 Q So when you were a law clerk at the
4 American Red Cross in parts of 1987 and '88, you
5 worked on trademark issues for the American Red
6 Cross?

7 A Yes.

8 Q What kind of work did you do?

9 A Reviewing the Trademark Gazette,
10 responding -- addressing through correspondence
11 misuses of the name and emblem that were brought to
12 our attention.

13 Q So would you send -- let me back up.

14 What's a cease-and-desist letter?

15 A In -- at the American Red Cross, it's an
16 educational letter that we send to say we understand
17 you are using the emblem. You may not be aware of
18 the statute. Bringing it to your attention. We ask
19 you to please cooperate and cease in its use.

20 Q So is it your view that the American Red
21 Cross doesn't send cease-and-desist letters to
22 people concerning the American Red Cross name and
23 emblem?

24 MS. KURIAN SHAW: Objection;
25 mischaracterizes the witness's testimony.

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Page 22

1 ANDREA MORISI

2 Objection; calls for a legal conclusion.

3 THE WITNESS: Did you say does or does
4 not?

5 BY MR. MILLER:

6 Q I'll ask it so that we're clear.

7 A Thank you.

8 Q Is it your view -- let me ask you this.

9 When you were in charge of trademark issues at the
10 American Red Cross, were the letters that you sent
11 to people who you believed were using the American
12 Red Cross name or emblem improperly cease-and-desist
13 letters or not?

14 A Yes, they were cease-and-desist letters.

15 Q What's a cease-and-desist letter?

16 MS. KURIAN SHAW: Asked and answered.

17 THE WITNESS: As I described above.

18 BY MR. MILLER:

19 Q Well, I think in your last answer, you're
20 talking about educational. Just so we're clean, can
21 you describe what a cease-and-desist letter is?

22 A It was a we're aware of your use of the
23 emblem and asking you to cease.

24 MS. KURIAN SHAW: Counsel, I believe you
25 have several of them. If you would like to show one

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Page 23

1 ANDREA MORISI

2 to Ms. Morisi and she can identify it for you, you
3 know, we could do that too.

4 BY MR. MILLER:

5 Q Okay. I just -- this is really
6 background, but I think it's important for the
7 record. So let's see if we can do it this way.

8 So at the American Red Cross, when you
9 were in charge of trademark issues, you often got
10 information about third parties using the American
11 Red Cross name or emblem; right?

12 A Correct.

13 Q And you would often send them a letter
14 concerning that use that you'd heard about; right?

15 MS. KURIAN SHAW: Objection; foundation.

16 BY MR. MILLER:

17 Q You can answer.

18 A Yes.

19 Q And in sending this letter, you explained
20 why you thought that this third party's use of the
21 American Red Cross name or emblem was improper;
22 right?

23 A Yes.

24 Q And in the letter that you would send to
25 third parties, you also asked the third parties,

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Page 24

1 ANDREA MORISI

2 typically, to stop using the American Red Cross name
3 or emblem; right?

4 A Always.

5 Q So when you were a law clerk with the
6 American Red Cross in parts of 1987 and '88, you
7 sent cease-and-desist letters -- let me -- sorry.

8 When you were a law clerk with the
9 American Red Cross in 1987 and 1988, did you send
10 cease-and-desist letters to third parties who were
11 using the American Red Cross name or emblem?

12 A To the extent I prepared them for the
13 attorney.

14 Q Okay. So at the time, did you not sign
15 the letters that were sent out to users of the
16 American Red Cross name and emblem?

17 A I did not sign.

18 Q Okay. And who did at that time?

19 A Pat Keller, X-e-l-l-e-r.

20 Q Who is Pat Keller?

21 A She was an attorney in our office at that
22 time.

23 Q Was she in charge of trademark issues at
24 the time, or no?

25 A Yes, she was in charge.

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Page 29

1 ANDREA MORISI

2 other documents.

3 Q What were the other documents?

4 MS. KURIAN SHAW: To the extent you
5 recall.

6 THE WITNESS: On the Microflex Corporation
7 case and other document -- other documents.

8 BY MR. MILLER:

9 Q What were some of those?

10 A IRS opinions, educational brochures, the
11 complaint.

12 Q In this case?

13 A Yes.

14 Q When you say you reviewed a file
15 concerning First Aid Only, or FAO, was that a
16 cease-and-desist file on FAO?

17 A Yes.

18 Q And where was that file?

19 A That file -- I don't know where that file
20 was.

21 Q Did you ask someone to get it for you?

22 A Yes.

23 Q Who got it for you?

24 A I don't know.

25 Q What kind of file did you review for

Highly Confidential

Page 30

1 ANDREA MORISI

2 Water-Jel?

3 A The correspondence between Water-Jel's
4 representatives and myself.

5 Q Did you talk to anyone at the American Red
6 Cross to prepare for your deposition?

7 A Just my counsel.

8 Q So when you started working as the
9 trademark lawyer for the American Red Cross in 1991
10 or 1992, the folks at the American Red Cross working
11 on trademark issues were you and a law clerk; right?

12 A Yes.

13 Q How did you get information about uses of
14 the American Red Cross name or emblem by people
15 other than the American Red Cross at that time?

16 MS. KURIAN SHAW: Objection; asked and
17 answered.

18 THE WITNESS: They would be brought to our
19 attention by our chapters, which are across the
20 country, across the world, Red Cross staff across
21 the world. They would be brought to our attention
22 by volunteers and other individuals who were aware
23 of the -- or had questions about the appropriateness
24 of someone's mark. They were discovered by me in
25 catalogues and by others in the organization and

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Page 31

1 ANDREA MORISI

2 later by the Internet.

3 BY MR. MILLER:

4 Q And when you started at the American Red
5 Cross, there was an intern who also interviewed --
6 excuse me.

7 When you started at the American Red Cross
8 working on trademark issues, there was also an
9 intern who reviewed the Trademark Gazette published
10 by the government concerning trademark applications;
11 right?

12 A Correct.

13 Q And that was another source of information
14 about people who were using the trademark -- excuse
15 me.

16 Was the Trademark Gazette also a source of
17 information about third parties using the American
18 Red Cross name or emblem?

19 A Yes, they were a potential use of the --
20 potential misuse, I should say, of the Red Cross
21 name and emblem.

22 Q Okay. And why was all this activity
23 undertaken to determine that other people were
24 using -- to determine whether or not other people
25 were using the American Red Cross name or emblem?

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Page 32

1 ANDREA MORISI

2 A The organization has an obligation to
3 protect that emblem, two obligations, I would say.
4 The first is via responsibility with Geneva
5 Conventions, educating individuals and others about
6 the appropriate use of the emblem, particularly in
7 combat and civil disorder type situations, civil
8 unrest.

9 And then sort of our domestic
10 responsibilities, shall we say, for trademark-type
11 protections, as our intellectual property, to be
12 preserved for our use.

13 Q So in the time you've worked on trademark
14 issues at the American Red Cross, do you know how
15 many cease-and-desist letters you sent to third
16 parties?

17 MS. KURIAN SHAW: Objection; calls for
18 speculation.

19 THE WITNESS: Feels like thousands. I
20 don't know the number.

21 BY MR. MILLER:

22 Q When you were the -- when you were in
23 charge of trademark issues at the American Red
24 Cross, about how much of your time was devoted to
25 trademark issues?

EXHIBIT 170

Page 2

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November 6, 2007

6

9:35 a.m.

7

8

Videotaped deposition of AMLIN KOTEI, held at
the offices of Patterson, Belknap, Webb & Tyler,
1133 Avenue of the Americas, New York, New York,
before Jeffrey Benz, a Certified Realtime
Reporter, Registered Merit Reporter and Notary
Public of the State of New York.

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Page 3

1

2 A P P E A R A N C E S:

3

4 PATTERSON BELKNAP WEBB & TYLER, LLP

5

6 Attorneys for Plaintiffs

7

8 1133 Avenue of the Americas

9

10 New York, New York 10036-6710

11

12 BY: PHYLLIS STAUB WALLITT, ESQ.

13

14

15 HOGAN & HARTSON LLP

16

17 Attorneys for Defendants

18

19 555 Thirteenth Street, Northwest

20

21 Washington, D.C. 20004

22

23 BY: PHILLIP O. METCALF, ESQ.

24

25 ASHLEY R. DOBBS, ESQ.

26

27

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33

34

35 ALSO PRESENT:

36

37 SILVIO FACCHIN, Videographer

Page 35

1 Kotei

2 that there were any hard-and-fast divisions
3 amongst components.

4 Q. Now, everything that's depicted on the
5 back of the label for -- for the emergency first
6 aid kit would certainly be included in the
7 boxing, right?

8 A. Sorry?

9 Q. I said everything that's depicted on
10 the label would be in the boxes, right?

11 A. Yes.

12 Q. Okay. Which would include
13 flashlights, batteries, whistles, light sticks,
14 masks, gloves, correct?

15 A. Yes.

16 Q. In addition to bandages and things
17 like that, correct?

18 A. Yes.

19 Q. I know we've been going for a little
20 while. Just like, whenever you want to take a
21 break, let me know, and we'll do it.

22 A. I will.

23 (Business plan document,

24 Bates-numbered JJARC 6265 through 6275, was
25 marked Kotei Exhibit 5 for identification,

Page 105

1 Kotei

² we took it out.

3 Q. Was it your understanding that the
4 emergency first aid kit, Eagle Scout, would
5 extend Johnson & Johnson into the field of
6 emergency preparedness products?

7 A. At the current time that would be --
8 that would have been true. I don't know if in
9 the past the company had done this. So -- in
10 past years, they may -- in the '40s and the '50s
11 and even in the '80s, there may have been
12 products that dealt in that area, but as of
13 2006, we didn't have any products in that area.
14 So yes.

15 MR. METCALF: Okay. Exhibit-- what I
16 have here is Exhibit 14.

17 (E-mail chain and attachment,
18 Bates-numbered 12947, 12948, and 12951,
19 were marked Kotei Exhibit 14 for
20 identification, as of this date.)

21 Q. Exhibit 14. E-mail chain that starts
22 at -- e-mail chain and attachment, starts at
23 Bates Number 12947 through 12951.

24 I'm sorry. I skipped a couple pages.
25 It's not right.

EXHIBIT 171

Contains Highly Confidential Portions

Page 1

1 JEFF TOLONEN
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X

5 JOHNSON & JOHNSON and JOHNSON & JOHNSON
6 CONSUMER COMPANIES, INC.,

7 Plaintiffs,

8 v. Case Number 07-CIV-7061 (JSR)

9 THE AMERICAN NATIONAL RED CROSS, LEARNING
10 CURVE INTERNATIONAL, INC., MAGLA PRODUCTS,
11 LLC, WATER-JEL TECHNOLOGIES, INC., and
12 FIRST AID ONLY, INC.,

13 Defendants.

14 -----X

15 VIDEOTAPED DEPOSITION OF JEFF TOLONEN

16 New York, New York

17 Wednesday, November 7, 2007

18 REPORTED BY: BARBARA R. ZELTMAN
19 Professional Shorthand Reporter

20 Job Number: 13956

21

22

23

24

25

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Page 2

1 JEFF TOLONEN

2

3

November 7, 2007

4 9:34 a.m.

5

6 Videotaped deposition of JEFF TOLONEN
7 taken by Defendants, pursuant to Notice, at the
8 offices of PATTERSON BELKNAP WEBB & TYLER, LLP, 1133
9 Avenue of the Americas, New York, New York, before
10 BARBARA R. ZELTMAN, a Professional Shorthand
11 Reporter and Notary Public within and for the State
12 of New York.

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Contains Highly Confidential Portions

Page 3

1 JEFF TOLONEN

2 A P P E A R A N C E S:

3

4 PATTERSON BELKNAP WEBB & TYLER, LLP

5 Attorneys for the Plaintiffs

6 1133 Avenue of the Americas

7 New York, New York 10036

8 BY: PHYLЛИS WALLITT, ESQ.

9

10

11 HOGAN & HARTSON, LLP

12 Attorneys for the Defendants

13 555 Thirteenth Street, NW

14 Washington, DC 20004

15 BY: PHILLIP METCALF, ESQ.

16

17

18 Also present: Josh Lipson, Videographer

19

20

21

22

23

24

25

Contains Highly Confidential Portions

Page 112

1 JEFF TOLONEN

2 thought it was consistent with what we
3 were trying to accomplish in the
4 Emergency First Aid Kit.

5 Q How does a flashlight -- let me
6 ask you a question.

7 Do you consider a flashlight a
8 first aid product?

9 A The flashlight itself is not
10 branded Johnson & Johnson Red Cross
11 first aid. I don't know if that answers
12 your question.

13 Q We talked earlier about what
14 your kind of working definition of first
15 aid was. And first aid products.

16 Would you consider -- you
17 wouldn't consider a flashlight a first
18 aid product?

19 A A flashlight in itself isn't a
20 wound cover or something that would have
21 a direct implication of first aid.

22 My understanding and for the
23 purposes of this kit is people aren't
24 always afforded the luxury of conducting
25 first aid on a Sunday afternoon in a

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Page 113

1 JEFF TOLONEN

2 park.

3 Oftentimes more emergency
4 situations create unique first aid
5 needs. And so our thinking in building
6 this kit was, frankly, post 2005 we saw
7 a massive increase in the entire
8 category of first aid kits, a dramatic
9 increase in sales directly related to
10 Hurricane Katrina, and then people
11 preparing for and after the fact either
12 replenishing supplies and preparing for
13 potentially the next one.

14 The implication of that from a
15 first aid standpoint is that there can
16 be useful items that enable the conduct
17 of first aid in more -- in different
18 situations, not always a Sunday in the
19 park.

20 So the intention of this kit,
21 the kernel of the idea of the consumer
22 insight was let's provide a first aid
23 kit that allows and enables the conduct
24 of first aid in more emergency
25 situations.

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Page 148

1 JEFF TOLONEN

2 from The American Red Cross, Casey Minix
3 Bagnalli and Jennifer Charnetski.

4 Just as a matter of practice.

5 It would be consistent with how I would
6 take notes on other conversations on a
7 particular document to have noted other
8 parties that may have been part of the
9 conversation.

10 If we went back and checked the
11 calendar for Monday, October 23rd and I
12 could be certain and verify that that
13 was a date we had a call set up, we can
14 verify whether or not this was part of
15 that conversation or at least feel more
16 confident that it was.

17 Q Did you consider the Emergency
18 First Aid Kit to be Johnson & Johnson's
19 entry into the field of the emergency
20 preparedness?

21 A Maybe in a deliberate sense, not
22 emergency preparedness but first aid and
23 more emergency kinds of contexts;
24 however, anecdotally just based on the
25 sales trends on the rest of our first

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Page 149

1 JEFF TOLONEN

2 aid kit line and recognizing certain
3 causal events, i.e., Hurricane Katrina,
4 even 9-11, it was clear that consumers
5 viewed purchasing our kits as a good
6 thing to do, responsible thing to do to
7 have items on hand.

8 So the way I would answer your
9 question is emergency preparedness
10 wasn't particularly what we were going
11 after, outside of how having any gauze
12 pad or tape on hand in the event of a
13 first aid emergency would be preparing
14 for that first aid need.

15 Q Was it your understanding that
16 American Red Cross had marketed their
17 first aid kit, as they sold in Target,
18 as an emergency preparedness kit?

19 A I don't remember the exact
20 designation of the product, but I
21 believe it was titled something like the
22 Emergency Preparedness Kit for a Family
23 of Four, maybe as the designation.

24 MR. METCALF: Let's take lunch.

25 THE VIDEOGRAPHER: It is 1:06.

EXHIBIT 172

Gregory L. Diskant
Karla G. Sanchez
Ravi V. Sitwala
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
Tel: (212) 336-2000
Fax: (212) 336-2222

Roger L. Zissu
Richard Z. Lehy
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
866 United Nations Plaza
New York, New York 10017
Tel: (212) 813-5900

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

)
JOHNSON & JOHNSON and JOHNSON &)
JOHNSON CONSUMER COMPANIES, INC.,)
)
Plaintiffs,) Case No. 07-CV-07061 (JSR)
)
v.)
)
THE AMERICAN NATIONAL RED CROSS,)
LEARNING CURVE INTERNATIONAL, INC.,)
MAGLA PRODUCTS, LLC, WATER-JEL)
TECHNOLOGIES, INC., and FIRST AID)
ONLY, INC.,)
)
Defendants.)
)

**PLAINTIFFS' RESPONSES TO DEFENDANTS'
FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, plaintiffs

Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. (collectively "J&J"),¹ by

¹ Defendants First Sets of Requests for Admission to each of the plaintiffs are identical to one another. Defendants' definition of J&J includes Johnson & Johnson's "affiliates, subsidiaries, divisions,

inconsistent with J&J's understanding, J&J reserves the right to amend or supplement its Responses.

7. Pursuant to Rule 36, any admission made herein is made only in the above captioned action and is not intended and shall not be construed to be an admission for any other action or proceeding. In addition, by its Responses, J&J does not intend to waive, but, on the contrary, expressly preserves: (a) the right to object on any ground to the use or introduction into evidence of any Response in any subsequent proceeding or in the trial of this or any other action on any ground; and (b) the right to object on any ground at any time to other requests for admission or other discovery involving these Requests or the subject matter thereof.

8. These General Objections and Responses, including the General Objections to Definitions set forth below, are incorporated in full into each specific response set forth below.

GENERAL OBJECTIONS TO DEFINITIONS

J&J incorporates by reference its objections to definitions in its responses and objections to Defendants' First Request for Production of Documents and Things.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

J&J did not sell light sticks under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

In addition to J&J's general objections, J&J objects to this Request as particularly vague in that "light stick" is not defined nor is it clear what it means to "sell [an item] *under the* J&J Cross Design and/or J&J Cross Design Variants." Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross light sticks of the sort

shown in Exhibit B to ARC's Answer and Counterclaims prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 2

J&J did not sell tweezers under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

In addition to J&J's general objections, J&J objects to this Request as particularly vague in that it is not clear what it means to "sell [an item] *under the* J&J Cross Design and/or J&J Cross Design Variants." Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross tweezers prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 3

J&J did not sell magnets under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

In addition to J&J's general objections, J&J objects to this Request as particularly vague in that it is not clear what it means to "sell [an item] *under the* J&J Cross Design and/or J&J Cross Design Variants." Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross magnets of the sort shown in Exhibit B to ARC's Answer and Counterclaims prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 4

J&J did not sell survival wrap under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

In addition to J&J's general objections, J&J objects to this Request as particularly vague in that "survival wrap" is not defined nor is it clear what it means to "sell [an item] *under*

the J&J Cross Design and/or J&J Cross Design Variants.” Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross survival wrap of the sort shown in Exhibit B to ARC’s Answer and Counterclaims prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 5

J&J did not sell first aid guides under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

In addition to J&J’s general objections, J&J objects to this Request as particularly vague in that it is not clear what it means to “sell [an item] *under the* J&J Cross Design and/or J&J Cross Design Variants.” Subject to and without waiving these objections, J&J denies the Request.

REQUEST FOR ADMISSION NO. 6

J&J did not sell first aid kits under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

In addition to J&J’s general objections, J&J objects to this Request as particularly vague in that it is not clear what it means to “sell [an item] *under the* J&J Cross Design and/or J&J Cross Design Variants.” Subject to and without waiving these objections, J&J denies the Request.

REQUEST FOR ADMISSION NO. 7

J&J did not sell hand sanitation gel under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

In addition to J&J’s general objections, J&J objects to this Request as particularly vague in that “hand sanitation gel” is not defined nor is it clear what it means to “sell [an item]

under the J&J Cross Design and/or J&J Cross Design Variants." Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross hand sanitation gel of the sort sold by defendant Water-Jel and advertised on ARC's website, but did sell antiseptic liquid soaps prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 8

J&J did not sell latex protective gloves under the J&J Cross Design and/or J&J Cross Design Variants prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

In addition to J&J's general objections, J&J objects to this Request as particularly vague in that it is not clear what it means to "sell [an item] *under the J&J Cross Design and/or J&J Cross Design Variants.*" Subject to and without waiving these objections, J&J is not aware of sales of individually branded red cross latex protection gloves prior to January 5, 1905, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 9

The Bill entitled "A BILL to protect the insignia and the name of the Red Cross" referenced in the 1895 Clara Barton Document was never enacted.

RESPONSE TO REQUEST FOR ADMISSION NO. 9

Subject to and without waiving J&J's general objections, J&J admits that the particular bill referenced in the 1895 Clara Barton Document was not enacted.

REQUEST FOR ADMISSION NO. 10

J&J did not use the mark depicted in U.S. Reg. No. 3,178,913 prior to January 5, 1905.

RESPONSE TO REQUEST FOR ADMISSION NO. 10

Subject to and without waiving J&J's general objections, J&J admits that it did not use the entire mark depicted in the '913 registration prior to January 5, 1905, but that it did